

## **REMARKS**

Applicant is in receipt of the Office Action mailed January 13, 2009. Claims 1-23 have been amended. Claims 1-24 are pending in the case. Reconsideration of the present case is earnestly requested in light of the following remarks.

### **Objections**

Figures 6, 8A-I, 12A-D, 13A-H, 15A-F, and 17A-G were objected to for being difficult to read, and have been amended accordingly for clarity. Removal of the objection to these figures is respectfully requested.

Claim 4 was objected to for ending with a semi-colon, and has been amended accordingly. Removal of the objection to claim 4 is respectfully requested.

### **Section 112 Rejections**

Claims 1-24 were rejected under 35 U.S.C. 112, second paragraph, for being indefinite, specifically for use of the term “and/or”. Applicant respectfully notes that this term is commonly understood to mean “inclusive OR”, i.e., “either or both”, and is thus clear and definite. However, to further prosecution, Applicant has amended the claims to recite “or” instead, and notes that the inclusive interpretation is intended.

Applicant thus requests removal of the section 112 rejection of the claims.

### **Section 101 Rejections**

Claims 1-21 were rejected under 35 U.S.C. 101 for being directed to nonstatutory subject matter, specifically, for omitting a storage medium for the function blocks. Applicant has amended claims 1-21 accordingly, and has also amended claim 22 so as not to duplicate amended claim 1.

Claims 23 and 24 were rejected under 35 U.S.C. 101 for being directed to nonstatutory subject matter for failing to recite a specific apparatus performing the method (or failing to recite transforming underlying subject matter). Applicant has amended these claims to recite a specific apparatus.

Applicant thus respectfully requests removal of the section 101 rejection of the claims.

## Section 102 Rejections

Claims 1-14, 16, and 19-24 were rejected under 35 U.S.C. 102(e) as being anticipated by Zink et al (US Patent 6,738,964, “Zink”). Applicant respectfully traverses the rejection of these claims.

Applicant respectfully reminds the Examiner that the standard for “anticipation” is one of strict identity. Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. M.P.E.P 2131; *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). The **identical invention** must be shown in as complete detail as is contained in the claims. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Amended claim 1 recites:

1. A memory medium that stores program instructions implementing plurality of function blocks for use in specifying and performing a signal analysis function utilizing a plurality of instruments, wherein the plurality of instruments comprises two or more virtual instruments (VIs), wherein each function block comprises:

a function block icon operable to be displayed in a graphical user interface (GUI) of a signal analysis function development environment, wherein the function block icon visually indicates a respective signal operation; and

a set of program instructions associated with the function icon, wherein the set of program instructions are executable to perform the respective signal operation;

wherein each function block is selectable from the plurality of function blocks by a user for inclusion in a set of function blocks, and wherein each function block operates to perform the respective signal operation continuously upon being selected;

wherein each function block is operable to provide a respective output based on the respective signal operation, wherein the respective output is operable to be displayed

in the GUI, provided as input to one or more other ones of the set of function blocks, or exported to an external device; and

wherein the set of function blocks is executable to perform the signal analysis function under the signal analysis function development environment using one or more of the plurality of instruments.

Nowhere does the cited art teach **wherein each function block operates to perform the respective signal operation continuously upon being selected**, as recited in claim 1.

Cited Figure 18 and related text disclose components for Zink's block diagrams, where blocks representing the components are connected with wires to graphically implement programs for digital signal processors and system designs. However, Zink's block diagrams are included in projects that are "compiled, assembled, linked, built" (see, col.6:42-45). The resulting executable may then be deployed to target platforms for execution. For example, col.11:61-63 states "Platform components are components that contain information about the target hardware where the project's executable code will be 'run'". Nowhere does Zink mention or even hint at the components performing their respective functions continuously upon being selected, i.e., executing continuously as soon as they are added to the block diagram.

Thus, the cited art fails to disclose this feature of claim 1.

Thus, for at least this reason, Applicant submits that the cited art fails to teach or suggest all of the features and limitations of claim 1. Thus claim 1, and those claims respectively dependent therefrom, are patentably distinct and nonobvious over the cited art, and thus allowable.

Independent claims 22 and 23 include similar limitations as claim 1, and so the above arguments apply with equal force to these claims. Dusk, for at least the above reasons, claims 22 and 23, and those claims respectively dependent therefrom, are similarly patentably distinct and nonobvious over the cited art, and thus allowable.

Applicant asserts that numerous ones of the dependent claims recite further distinctions over the cited art.

For example, nowhere does the cited art teach **wherein the diagram comprises one or more control structures, wherein the one or more control structures control execution of the set of function blocks; and wherein the one or more control structures comprises one or more of: conditional branching; or looping**, as recited in claim 4.

Cited Figure 16C illustrates multiple code modules in a development component, where, as the related text explains, the particular code module included in the project depends on property settings. Applicant respectfully notes that the citation does *not* disclose *control structures, i.e., conditional branching or looping, in the diagram*. More specifically, note that the cited “conditional” simply refers to the fact that the user configures a property, e.g., “triangle waveform”, which results in inclusion of the appropriate code module, e.g., “the ‘triangle files’ (triangle.h, triangle.c, and triangle.obj) into the project”. Clearly, this is not a conditional in the diagram, is not represented in the diagram, and is not exercised during execution of the diagram (the executable generated from the diagram).

Thus, the cited art fails to disclose this feature of claim 4.

Nor does the cited art teach **wherein the diagram comprises information specifying the respective signal operations of the set of function blocks, and wherein the information is executable to perform the signal analysis function under the signal analysis function development environment**, as recited in claim 4.

As noted above, cited Figure 16C illustrates multiple code modules in a development component, where, per the related text, the particular code module included in the project depends on property settings. As mentioned above, Zink’s projects are “compiled, assembled, linked, built” (see, col.6:42-45), where the resulting executable is deployed to target platforms for execution. Nowhere does Zink indicate that Zink’s executable files perform their functionality under the development environment in which they were developed. Applicant notes that this feature of claim 4 facilitates the

“continuous” execution functionality discussed above with respect to claim 1, in that the function blocks can execute during development of the signal analysis function.

Thus, the cited art fails to disclose this feature of claim 5.

Applicant also asserts that numerous other ones of the dependent claims recite further distinctions over the cited art. However, since the independent claims have been shown to be patentably distinct, a further discussion of the dependent claims is not necessary at this time.

Removal of the section 102 rejection of claims 1-14, 16, and 19-24 is earnestly requested.

### **Section 103 Rejections**

Claims 15, 17, and 18 were rejected under 35 U.S.C. 103(a) as being unpatentable over Zink in view of Austin (US Patent Pub. 2002/0070966).

As the Examiner is certainly aware, if an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)

Applicant asserts that numerous ones of the dependent claims recite further distinctions over the cited art. However, since the independent claims have been shown to be patentably distinct, a further discussion of the dependent claims is not necessary at this time.

Removal of the section 103 rejection of claims 15, 17, and 18 is earnestly requested.

## **CONCLUSION**

Applicant submits the application is in condition for allowance, and an early notice to that effect is requested.

If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above-referenced application(s) from becoming abandoned, Applicant(s) hereby petition for such extensions. The Commissioner is hereby authorized to charge any fees which may be required or credit any overpayment to Meyertons, Hood, Kivlin, Kowert & Goetzel P.C., Deposit Account No. 50-1505/5150-82300/JCH.

Also filed herewith are the following items:

- Thirty-three (33) replacement sheets containing amended Figures 6, 8A-I, 12A-D, 13A-H, 15A-F, and 17A-G.
- Terminal Disclaimer
- Power of Attorney By Assignee and Revocation of Previous Powers
- Notice of Change of Address
- Other:

Respectfully submitted,

/Jeffrey C. Hood/  
Jeffrey C. Hood, Reg. #35198  
ATTORNEY FOR APPLICANT(S)

Meyertons, Hood, Kivlin, Kowert & Goetzel PC  
P.O. Box 398  
Austin, TX 78767-0398  
Phone: (512) 853-8800  
Date: 2009-03-27 JCH/MSW